IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH **Single Bench**

S.A. No. 37 /2005

APPELLANT : Shivnandan Gosai, S/o. Channu Gosai, Aged about 60 years, R/o. Masjidpara, Jaistambh Chowk, Ambikapur, Distt. Surguja (C.G.)

R.R. No. 179/05
Presented by Sri M.K. Bajpai Adv.
dated 17.1.05

VERSUS

RESPONDENT : Mangal Prasad Gupta S/o. Rajkumar, Gupta, Aged about 67 years, R/o. Jaistambh Chowk, Ambikapur, Distt. Surguja (C.G.)

SECOND APPEAL UNDER SECTION 32 OF THE CHHATTISGARH ACCOMMODATION CONTROL ACT

DRR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No. 37 of 2005

Shivnandan Gosai

Versus

Mangal Prasad Gupta

ORDER

Post for 8 -09-2005

Sd/-
Sunil Kumar Sinha
Judge

Noted
Counsel for appellant
(Vaibhav Goyedkar)
08/09/05

(95)

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No. 37 of 2005

Shivnandan Gosai

Versus

Mangal Prasad Gupta

Appearance:

Shri Manoj Paranjpe, counsel for the appellant.

Shri Sushil Dubey, counsel for the respondent.

ORDER
(8-09-2005)

SUNIL KUMAR SINHA, J.

(1) During the course of hearing on an application filed under Section 5 of the Limitation Act, a short question for consideration has been raised as to what would be the period of limitation for filing an appeal under Section 32 of the C.G. Accommodation Control Act, 1961?

(2) Answering the aforesaid question, this order shall dispose of M.(C.).P. No. 114 of 2005, which is the application for condonation of delay in filing the S.A. No. 37 of 2005, under Section 5 of the Limitation Act.

(3) The appellant has filed this second appeal under Section 32 of C.G. Accommodation Control Act, 1961 (hereinafter referred to as the Act). As per office report, this appeal is barred by 540 days of limitation. The appeal has been filed against the impugned order dated

24.04.2003 passed by the District Judge in Misc. Civil Appeal No. 03/2003 filed under Section 31 of the aforesaid Act. It appears that the Rent Controlling Authority, Ambikapur, District-Sarguja passed an order dated 27.1.2003 in case No. 4/B/121/1999-2000 for fixation of standard rent under Section 10 of the aforesaid Act. The said order, passed by the Rent Controlling Authority was challenged by both the parties in two different Misc. Appeals bearing No. 2/2003 and 3/2003 before the District Judge, Ambikapur and the District Judge disposed of both the appeals by impugned common order dated 24.4.2003 against which this second appeal has been filed by the tenant.

(4) The explanation for delay caused in filing the second appeal has been given in the application. It is contended by the appellant that the appellant is a poor person. Due to financial crisis, financial clutches and illiteracy, the order passed by the District Judge on 24.4.2003 could not be challenged, therefore, the appellant approach his advocate and thereafter, an application under Order 23 Rule 3 read with Section 151 of C.P.C. was filed by the appellant before the District Judge on an advice given to him by his local counsel. This application was filed on 17.10.2003. The said application was registered as M.J.C. No. 49/2003. This M.J.C. was dismissed by the District Judge on 21.8.2004 holding that after disposal of the appeal under Section 31 of the Act, such application before the same Court would not be maintainable. It is further submitted that thereafter a revision under Section 115 of C.P.C. was filed against the said order passed in M.J.C. before the High Court and when this revision came up for hearing on 6.1.2005 vide Civil Revision No. 161 of 2004, the same was withdrawn with a liberty to take appropriate recourse in accordance with law.

(5) Learned counsel for the appellant submits that after withdrawal of the revision on 6.1.2005, this second appeal, against the appellate order passed by the District Judge on 24.4.2003 was filed on

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17.1.2005 with an application for condonation of delay under Section 5 of the Limitation Act. He submits that in the aforesaid manner, the delay of 540 days in filing the present appeal is explained and the same should be condoned.

(6) On the other hand, learned counsel for the respondent, after filing a reply to the aforesaid application under Section 5 of the Limitation Act, has opposed this application for condonation of delay. It is contended by him that the appellant is a rich person having two houses in his ownership in the township of Ambikapur worth Rs. 2 lakhs. He has two sons who are also earning, therefore, the question of not approaching to the High Court due to final crisis is incorrect. It is submitted that the appellant has not shown sufficient cause to condone the delay in filing the present appeal as much as each day of delay has not been explained by him and his application which is not bonafide, deserves to be dismissed.

(7) I have heard learned counsel for the parties at length and have also perused the records of the second appeal.

(8) The first question arises for consideration is about the period of limitation for filing a second appeal under the Act. The aforesaid Act, does not prescribe specified period of limitation for filing a second appeal under Section 32. Therefore, as to what would be the period of limitation for filing an appeal before the High Court is a point raised for consideration.

(9) In the ***A.I.R. 1953 SC 357 (National Sewing Thread Co. –Vs- James Chadwick and Bros.)***, the Apex Court while dealing a matter about maintainability of the letters patent appeal in the matters of Trade Marks Act (1940) after disposal of the first appeal by the High Court determined that since the provision of Trade Marks Act provides for an appeal to the High Court and nothing more, then a letters patent appeal would lie against the judgment of the High Court

because of there being nothing to the contrary in the Trade Marks Act. The reasoning given by the Apex Court is that after an appeal reaches the High Court, under the statute, it has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. Therefore, if Section 76 of Trade Marks Act confers a right of appeal to the High Court and says nothing more about it, then, that being so, the High Court being seized as such of the appellate jurisdiction conferred by Section 76 it has to exercise that jurisdiction in the same manner as it exercise its other appellate jurisdiction and when such jurisdiction is exercised by a single judge, his judgment becomes subject to appeal under clause 15 of the Letters Patent as there being nothing to the contrary to it in the Trade Marks Act.

(10) This analogy laid down by the Apex Court about maintainability of letters patent appeal against the judgment of the Trade Marks Act by the single judge is based upon the logic that once the High Court exercises its appellate jurisdiction conferred under a particular Act and the Act says nothing contrary to the general appellate jurisdiction exercised by the High Court, the High Court has to exercise its jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a single judge, his judgment becomes subject to appeal under the letters patent.

(11) Applying this analogy, if we determine the nature of jurisdiction vested by the aforesaid Act to the High Court for hearing second appeals under Section 32 of the said Act, it would appear that if nothing contrary is prescribed in the special Act about special nature of jurisdiction to be exercised by the High Court while hearing a second appeal filed by the appellant then according to the principles

of practice and procedure, the High Court would exercise its appellate jurisdiction ordinarily to hear the second appeal presented before it. Certainly this jurisdiction to hear a second appeal under Section 32 of the Act would be analogous to Section 100 of C.P.C and the limitation prescribed for hearing a second appeal under Section 100 of the Code of Civil Procedure would be applicable to the second appeals filed under Section 32 of the aforesaid Act. Therefore, I hold that when the substantial Act i.e. C.G. Accommodation Control Act, 1961, does not prescribe a period of limitation for filing a second appeal under Section 32 of the said Act before the High Court and the Act says nothing more about jurisdiction of the High Court, then the High Court, according to the rules of practice and procedure of the Court and in accordance with the provision of the charter under which this Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction will hear the second appeal, and the period of limitation prescribed for hearing of appeals under the Code of Civil Procedure in Article 116 of Limitation Act, 1963 would also be applicable in case of appeals filed under Section 32 of the Act.

(12) Now second question arises as to whether the appellant has satisfactorily explained the delay of 540 days in filing of this appeal? Even if for the sake of argument we condone the delay of such period which the appellant has exhausted in fighting litigation in various other courts having no jurisdiction treating it to be bonafide, the delay from 24.4.2003 to 17.10.2003 i.e. from the date of impugned order passed by the District Judge to the date of filing of an application under Order 23 Rule 3 of C.P.C. etc. has not been explained. The appellant has taken a ground that due to poverty and financial crisis, he could not file an appeal against the order passed by the District Judge in Misc. Appeal No.3/2003 and he approached to his local counsel, who advised to file an application of such a nature before the same Court. This argument advanced by learned counsel for the

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appellant cannot be accepted. It is unbelievable that the appellant could not approach to the High Court or the appropriate forum due to financial crisis. In the facts and circumstances of the case, when the appellant, having been lost in the M.J.C., filed before the District Judge, had approached the High Court by filing a civil revision against the said order vide C.R. No. 161 of 2004, then he could have availed his correct remedy earlier also. When the appellant could come to the High Court at this later stage for filing the civil revision No. 161 of 2004 after being willfully participated in a long life second round of litigation in the same court enjoying the possession of a tenanted premises which was in fact a nullity for want of jurisdiction then he was able to approach this Court on the earlier occasions also i.e. in between 24.4.2003 to 17.10.2003 for filing a second appeal under Section 32 of the Act which he has filed after being unsuccessful in M.J.C. No. 49/2003 before the District Court and in civil revision No. 161 of 2004 before this Court.

(13) It has been held by the Apex Court in the matter of ***Ramlal and others, Appellants –Vs- Rewa Coalfields Ltd.***, ***reported in AIR 1962 S.C. 361*** that in construing section 5, it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed gives rise to a right in favour of the decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree holder by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.

(10D)

This has been held by the apex Court after quoting an observation made by the Madras High Court in the matter of ***Krishna –Vs- Chathappan, ILR 13 Madras 269*** which reads as under:

> *"Section 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bonafide is imputable to the appellant."*

(14) The apex Court again held in the matter of ***The State of West Bengal –Vs- The Administrator, Howrah Municipality and others reported in (1972) 1 SCC 366*** that the words "sufficient cause" in section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is imputable to a party. (Please see Para 30 of the said judgment).

(15) It has been further held in the matter o ***G.Ramegowda, Major and others –Vs- Special Land Acquisition Officer, Bangalore (1988) 2 SCC 142 vide para 14*** that there is no general principle saving the party from all mistakes of its counsel. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.

(16) It has also been held in the matter of ***M. Balakrishnan –Vs- M.Krishnamurthy (1998) 7 SCC 123*** that "the law of limitation is

founded on public policy. It is enshrined in the maxim ***interest reipublicae up sit finis litium*** (it is for the general welfare that a period be put to litigation). The rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time." The Apex Court also held that "the length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory."

(17) If we analyze this case on above principles and take into consideration the period from 24.4.2003 to 17.10.2003, it would appear from Annexure-A/3 (certified copy of impugned order) that an application for obtaining certified copy of the impugned order date 24.4.2003 was filed on 28.4.2003 and the copy was ready for delivery on 30.4.2003. If we exclude these 3 days and one day of order and also 90 days of limitation for filing this second appeal, even then, the delay of 82 days are not at all explained on the record of this case. In the arguments learned counsel for the appellant submitted that due to financial crisis and poverty, the appellant could not reach to the High Court but he had not said that the appellant or his local counsel were having no knowledge about the fact that a second appeal is to be filed before the High Court and M.J.C. or Civil Revision etc. were not maintainable.

(18) Therefore, I am constrained to hold that in fact, there is no substantial explanation of the delay of about 82 days as each days delay commencing from 24.4.2003 to 17.10.2003, excluding the period of 90 days of normal limitation and also the copying days have not been explained in this matter. I also hold that the period exhausted

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in contesting the case in different Courts and the delay caused on account of the proceedings before the Courts without jurisdiction from 17.10.2003 to 6.1.2005 are not bonafide as the same cannot be classified as the expression "sufficient cause" shown in Section 5 of the Limitation Act. It is a case of gross negligence and deliberate wrong step/action taken and lack of bonafide is imputable to the appellant.

(19) The application filed under Section 5 of the Limitation Act vide M.(C.).P. No. 114 of 2005 is dismissed. In consequence, this appeal is dismissed being barred by limitation. No costs

Sd/-
Sunil Kumar Sinha
Judge

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